

Teach For America Statement of Agreement

This Agreement ("Agreement") is entered into as of August 1, 2011 ("Effective Date") and will end on June 15, 2014, by and between the State of Delaware, Department of Education, hereafter referred to as DDOE, and **Teach For America**, hereafter referred to as TFA

WHEREAS, DDOE desires to obtain certain services with respect to the recruitment, selection, pre-service training and ongoing professional development of aspiring educators to teach in high-need public schools and districts within the State of Delaware; and

WHEREAS, TEACH FOR AMERICA desires to provide such services to DDOE on the terms set forth below;

WHEREAS, DDOE and TEACH FOR AMERICA represent and warrant that each party has full right, power and authority to enter into and perform under this Agreement;

FOR AND IN CONSIDERATION OF the premises and mutual agreements herein, DDOE and TEACH FOR AMERICA agree as follows:

1. Services.

1.1 TEACH FOR AMERICA shall perform for DDOE the services specified in the Appendices to this Agreement, attached hereto and made a part hereof.

1.2 Any conflict or inconsistency between the provisions of the following documents shall be resolved by giving precedence to such documents in the following order: (a) this Agreement (including any amendments or modifications thereto); (b) DDOE's request for proposals, attached hereto as Appendix C; and (c) TEACH FOR AMERICA's response to the request for proposals, attached hereto as Appendix D. The aforementioned documents are specifically incorporated into this Agreement and made a part hereof.

1.3 DDOE may, at any time, by written order, make changes in the scope of this Agreement and in the services or work to be performed. No services for which additional compensation may be charged by TEACH FOR AMERICA shall be furnished without the written authorization of DDOE. When DDOE desires any addition or deletion to the deliverables or a change in the Services to be provided under this Agreement, it shall notify TEACH FOR AMERICA, who shall then submit to DDOE a "Change Order" for approval authorizing said change. The Change Order shall state whether the change shall cause an alteration in the

price or the time required by TEACH FOR AMERICA for any aspect of its performance under this Agreement. Pricing of changes shall be consistent with those established within this Agreement.

1.4 TEACH FOR AMERICA will not be required to make changes to its scope of work that result in TEACH FOR AMERICA's costs exceeding the current unencumbered budgeted appropriations for the services. Any claim of either party for an adjustment under Section 1 of this Agreement shall be asserted in the manner specified in the writing that authorizes the adjustment.

2. Payment for Services and Expenses.

2.1 The term of the initial contract shall be from August 1, 2011 through June 15, 2014.

2.2 DDOE will pay TEACH FOR AMERICA for the performance of services described in Appendix A, Statement of Work. The fee will be paid in accordance with the payment schedule attached hereto as part of Appendix B.

2.3 DDOE's obligation to pay TEACH FOR AMERICA for the performance of services described in Appendix A, Statement of Work will not exceed the fixed fee amount of \$390,000. It is expressly understood that the work defined in the appendices to this Agreement must be completed by TEACH FOR AMERICA and it shall be TEACH FOR AMERICA's responsibility to ensure that hours and tasks are properly budgeted so that all services are completed for the agreed upon fixed fee. DDOE's total liability for all charges for services that may become due under this Agreement is limited to the total maximum expenditure(s) authorized in DDOE's purchase order(s) to TEACH FOR AMERICA.

2.4 TEACH FOR AMERICA shall submit monthly invoices to DDOE in sufficient detail to support the services provided during the previous month. DDOE agrees to pay those invoices within thirty (30) days of receipt. In the event DDOE disputes a portion of an invoice, DDOE agrees to pay the undisputed portion of the invoice within thirty (30) days of receipt and to provide TEACH FOR AMERICA a detailed statement of DDOE's position on the disputed portion of the invoice within thirty (30) days of receipt. DDOE's failure to pay any amount of an invoice that is not the subject of a good-faith dispute within thirty (30) days of receipt shall entitle TEACH FOR AMERICA to charge interest on the overdue portion at the lower of 1.0% per month.

All payments should be sent to:

TEACH FOR AMERICA
100 West 10th Street, Suite 500
Wilmington, Delaware 19801

2.5 Unless provided otherwise in an Appendix, all expenses incurred in the performance of the services are to be paid by TEACH FOR AMERICA. If an Appendix specifically provides for expense reimbursement, TEACH FOR AMERICA shall be reimbursed only for reasonable expenses incurred by TEACH FOR AMERICA in the performance of the services, including, but not necessarily limited to, travel and lodging expenses, communications charges, and computer time and supplies.

2.6 DDOE is a sovereign entity, and shall not be liable for the payment of federal, state and local sales, use and excise taxes, including any interest and penalties from any related deficiency, which may become due and payable as a consequence of this Agreement.

2.7 DDOE shall subtract from any payment made to TEACH FOR AMERICA all damages, costs and expenses caused by TEACH FOR AMERICA's negligence, resulting from or arising out of errors or omissions in TEACH FOR AMERICA's work products, which have not been previously paid to TEACH FOR AMERICA.

2.8 Invoices shall be submitted to:

Michelle L. Kriss
Race To The Top Project Management Office &
Professional Standards Board
Delaware Department of Education
401 Federal Street, Suite #2
Dover, DE 19901-3639

3. Responsibilities of TEACH FOR AMERICA.

3.1 TEACH FOR AMERICA shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by TEACH FOR AMERICA, its subcontractors and its and their principals, officers, employees and agents under this Agreement. In performing the specified services, TEACH FOR AMERICA shall follow practices consistent with generally

accepted professional and technical standards. TEACH FOR AMERICA shall be responsible for ensuring that all services, products and deliverables furnished pursuant to this Agreement comply with the standards promulgated by the Department of Technology and Information ("DTI") published at <http://dti.delaware.gov/>, and as modified from time to time by DTI during the term of this Agreement. If any service, product or deliverable furnished pursuant to this Agreement does not conform with DTI standards, TEACH FOR AMERICA shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform with DTI standards. TEACH FOR AMERICA shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to DDOE caused by TEACH FOR AMERICA's failure to ensure compliance with DTI standards.

3.2 It shall be the duty of the TEACH FOR AMERICA to assure that all products of its effort are technically sound and in conformance with all pertinent Federal, State and Local statutes, codes, ordinances, resolutions and other regulations. TEACH FOR AMERICA will not produce a work product that violates or infringes on any copyright or patent rights. TEACH FOR AMERICA shall, without additional compensation, correct or revise any errors or omissions in its work products.

3.3 Permitted or required approval by DDOE of any products or services furnished by TEACH FOR AMERICA shall not in any way relieve TEACH FOR AMERICA of responsibility for the professional and technical accuracy and adequacy of its work. DDOE's review, approval, acceptance, or payment for any of TEACH FOR AMERICA's services herein shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and TEACH FOR AMERICA shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to DDOE caused by TEACH FOR AMERICA's performance or failure to perform under this Agreement.

3.4 TEACH FOR AMERICA shall appoint a Project Manager who will manage the performance of services. All of the services specified by this Agreement shall be performed by the Project Manager, or by TEACH FOR AMERICA's associates and employees under the personal supervision of the Project Manager. The positions anticipated include:

Project	Team	Title	% of Project Involvement
Teach For America-DE		Executive Director	100%

3.5 Designation of persons for each position is subject to review and approval by DDOE. Should the staff need to be diverted off the project for what are now unforeseeable circumstances, TEACH FOR AMERICA will notify DDOE immediately and work out a transition plan that is acceptable to both parties, as well as agree to an acceptable replacement plan to fill or complete the work assigned to this project staff position. Replacement staff persons are subject to review and approval by DDOE. If TEACH FOR AMERICA fails to make a required replacement within 30 days, DDOE may terminate this Agreement for default. Upon receipt of written notice from DDOE that an employee of TEACH FOR AMERICA is unsuitable to DDOE for good cause, TEACH FOR AMERICA shall remove such employee from the performance of services and substitute in his/her place a suitable employee.

3.6 TEACH FOR AMERICA shall furnish to DDOE's designated representative copies of all correspondence to regulatory agencies for review prior to mailing such correspondence.

3.7 TEACH FOR AMERICA agrees that its officers and employees will cooperate with DDOE in the performance of services under this Agreement and will be available for consultation with DDOE at such reasonable times with advance notice as to not conflict with their other responsibilities.

3.8 TEACH FOR AMERICA has or will retain such employees as it may need to perform the services required by this Agreement. Such employees shall not be employed by the State of Delaware or any other political subdivision of the State.

3.9 TEACH FOR AMERICA will not use DDOE's name, either express or implied, in any of its advertising or sales materials without DDOE's express written consent.

3.10 The rights and remedies of DDOE provided for in this Agreement are in addition to any other rights and remedies provided by law.

4. Time Schedule.

4.1 A project schedule is included in Appendix A.

4.2 Any delay of services or change in sequence of tasks must be approved in writing by DDOE.

4.3 In the event that TEACH FOR AMERICA fails to complete the project or any

phase thereof within the time specified in the Contract, or with such additional time as may be granted in writing by DDOE, or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this Agreement or any extensions thereof, DDOE shall suspend the payments scheduled as set forth in Appendix A.

5. State Responsibilities.

5.1 In connection with TEACH FOR AMERICA's provision of the Services, DDOE shall perform those tasks and fulfill those responsibilities specified in the appropriate Appendices.

5.2 DDOE agrees that its officers and employees will cooperate with TEACH FOR AMERICA in the performance of services under this Agreement and will be available for consultation with TEACH FOR AMERICA at such reasonable times with advance notice as to not conflict with their other responsibilities.

5.3 The services performed by TEACH FOR AMERICA under this Agreement shall be subject to review for compliance with the terms of this Agreement by DDOE's designated representatives. DDOE representatives may delegate any or all responsibilities under the Agreement to appropriate staff members, and shall so inform TEACH FOR AMERICA by written notice before the effective date of each such delegation.

5.4 The review comments of DDOE's designated representatives may be reported in writing as needed to TEACH FOR AMERICA. It is understood that DDOE's representatives' review comments do not relieve TEACH FOR AMERICA from the responsibility for the professional and technical accuracy of all work delivered under this Agreement.

5.5 DDOE shall, without charge, furnish to or make available for examination or use by TEACH FOR AMERICA as it may request, any data which DDOE has available, including as examples only and not as a limitation:

- a. Copies of reports, surveys, records, and other pertinent documents;
- b. Copies of previously prepared reports, job specifications, surveys, records, ordinances, codes, regulations, other document, and information related to the services specified by this Agreement.

TEACH FOR AMERICA shall return any original data provided by DDOE.

5.6 DDOE shall assist TEACH FOR AMERICA in obtaining data on documents

from public officers or agencies and from private citizens and business firms whenever such material is necessary for the completion of the services specified by this Agreement.

5.7 TEACH FOR AMERICA will not be responsible for accuracy of information or data supplied by DDOE or other sources to the extent such information or data would be relied upon by a reasonably prudent contractor.

5.8 DDOE agrees not to use TEACH FOR AMERICA's name, either express or implied, in any of its advertising or sales materials. TEACH FOR AMERICA reserves the right to reuse the nonproprietary data and the analysis of industry-related information in its continuing analysis of the industries covered.

6. Work Product.

6.1 All materials, information, documents, and reports, whether finished, unfinished, or draft, developed, prepared, completed, or acquired by TEACH FOR AMERICA for DDOE relating to the services to be performed hereunder shall become the property of DDOE and shall be delivered to DDOE's designated representative upon completion or termination of this Agreement, whichever comes first. TEACH FOR AMERICA shall not be liable for damages, claims, and losses arising out of any reuse of any work products on any other project conducted by DDOE. DDOE shall have the right to reproduce all documentation supplied pursuant to this Agreement.

6.2 TEACH FOR AMERICA retains all title and interest to the data it furnished and/or generated pursuant to this Agreement. Retention of such title and interest does not conflict with DDOE's rights to the materials, information and documents developed in performing the project. Upon final payment, DDOE shall have a perpetual, nontransferable, non-exclusive paid-up right and license to use, copy, modify and prepare derivative works of all materials in which TEACH FOR AMERICA retains title, whether individually by TEACH FOR AMERICA or jointly with DDOE. Any and all source code developed in connection with the services provided will be provided to DDOE, and the aforementioned right and license shall apply to source code. The parties will cooperate with each other and execute such other documents as may be reasonably deemed necessary to achieve the objectives of this Section.

6.3 In no event shall TEACH FOR AMERICA be precluded from developing for itself, or for others, materials that are competitive with the Deliverables, irrespective of their similarity to the Deliverables. In addition, TEACH FOR AMERICA shall be free to use its general knowledge, skills and experience, and

any ideas, concepts, know-how, and techniques within the scope of its consulting practice that are used in the course of providing the services.

6.4 Notwithstanding anything to the contrary contained herein or in any attachment hereto, any and all intellectual property or other proprietary data owned by TEACH FOR AMERICA prior to the effective date of this Agreement ("Preexisting Information") shall remain the exclusive property of TEACH FOR AMERICA even if such Preexisting Information is embedded or otherwise incorporated into materials or products first produced as a result of this Agreement or used to develop such materials or products. DDOE's rights under this section shall not apply to any Preexisting Information or any component thereof regardless of form or media.

7. Confidential Information.

To the extent permissible under 29 Del. C. § 10001, et seq., the parties to this Agreement shall preserve in strict confidence any information, reports or documents obtained, assembled or prepared in connection with the performance of this Agreement.

8. Warranty.

8.1 TEACH FOR AMERICA warrants that its services will be performed in a good and workmanlike manner. TEACH FOR AMERICA agrees to re-perform any work not in compliance with this warranty brought to its attention within a reasonable time after that work is performed.

8.2 Third-party products within the scope of this Agreement are warranted solely under the terms and conditions of the licenses or other agreements by which such products are governed. With respect to all third-party products and services purchased by TEACH FOR AMERICA for DDOE in connection with the provision of the Services, TEACH FOR AMERICA shall pass through or assign to DDOE the rights TEACH FOR AMERICA obtains from the manufacturers and/or vendors of such products and services (including warranty and indemnification rights), all to the extent that such rights are assignable.

9. Indemnification; Limitation of Liability.

9.1 TEACH FOR AMERICA shall indemnify and hold harmless the State, its agents and employees, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) directly arising

out of (A) the negligence or other wrongful conduct of the TEACH FOR AMERICA, its agents or employees, or (B) TEACH FOR AMERICA's breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided as to (A) or (B) that (i) TEACH FOR AMERICA shall have been notified promptly in writing by DDOE of any notice of such claim; and (ii) TEACH FOR AMERICA shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise.

9.2 If DDOE promptly notifies TEACH FOR AMERICA in writing of a third party claim against DDOE that any Deliverable infringes a copyright or a trade secret of any third party, TEACH FOR AMERICA will defend such claim at its expense and will pay any costs or damages that may be finally awarded against DDOE. TEACH FOR AMERICA will not indemnify DDOE, however, if the claim of infringement is caused by (1) DDOE's misuse or modification of the Deliverable; (2) DDOE's failure to use corrections or enhancements made available by TEACH FOR AMERICA; (3) DDOE's use of the Deliverable in combination with any product or information not owned or developed by TEACH FOR AMERICA; (4) DDOE's distribution, marketing or use for the benefit of third parties of the Deliverable or (5) information, direction, specification or materials provided by Client or any third party. If any Deliverable is, or in TEACH FOR AMERICA's opinion is likely to be, held to be infringing, TEACH FOR AMERICA shall at its expense and option either (a) procure the right for DDOE to continue using it, (b) replace it with a noninfringing equivalent, (c) modify it to make it noninfringing. The foregoing remedies constitute DDOE's sole and exclusive remedies and TEACH FOR AMERICA's entire liability with respect to infringement.

9.3 DDOE agrees that TEACH FOR AMERICA's total liability to DDOE for any and all damages whatsoever arising out of or in any way related to this Agreement from any cause, including but not limited to contract liability or TEACH FOR AMERICA negligence, errors, omissions, strict liability, breach of contract or breach of warranty shall not, in the aggregate, exceed fees paid to TEACH FOR AMERICA.

In no event shall TEACH FOR AMERICA be liable for special, indirect, incidental, economic, consequential or punitive damages, including but not limited to lost revenue, lost profits, replacement goods, loss of technology rights or services, loss of data, or interruption or loss of use of software or any portion thereof regardless of the legal theory under which such damages are sought, and even if TEACH FOR AMERICA has been advised of the likelihood of such damages.

10. Employees.

10.1 TEACH FOR AMERICA has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by TEACH FOR AMERICA in the performance of the services hereunder; provided, however, that it will, subject to scheduling and staffing considerations, attempt to honor DDOE's request for specific individuals.

10.2 Except as the other party expressly authorizes in writing in advance, neither party shall solicit, offer work to, employ, or contract with, whether as a partner, employee or independent contractor, directly or indirectly, any of the other party's Personnel during their participation in the services or during the twelve (12) months thereafter. For purposes of this Section 10.2, "Personnel" includes any individual or company a party employs as a partner, employee or independent contractor and with which a party comes into direct contact in the course of the services.

10.3 Possession of a Security Clearance, as issued by the Delaware Department of Public Safety, may be required of any employee of TEACH FOR AMERICA who will be assigned to this project.

11. Independent Contractor.

11.1 It is understood that in the performance of the services herein provided for, TEACH FOR AMERICA shall be, and is, an independent contractor, and is not an agent or employee of DDOE and shall furnish such services in its own manner and method except as required by this Agreement. TEACH FOR AMERICA shall be solely responsible for, and shall indemnify, defend and save DDOE harmless from all matters relating to the payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever.

11.2 TEACH FOR AMERICA acknowledges that TEACH FOR AMERICA and any subcontractors, agents or employees employed by TEACH FOR AMERICA shall not, under any circumstances, be considered employees of DDOE, and that they shall not be entitled to any of the benefits or rights afforded employees of DDOE, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits. DDOE will not provide or pay for any liability or medical insurance, retirement contributions or any other benefits for or on behalf of DDOE or any of its officers, employees or other agents.

11.3 TEACH FOR AMERICA shall be responsible for providing liability insurance for its personnel.

11.4 As an independent contractor, TEACH FOR AMERICA has no authority to bind or commit DDOE. Nothing herein shall be deemed or construed to create a joint venture, partnership, fiduciary or agency relationship between the parties for any purpose.

12. Suspension.

12.1 DDOE may suspend performance by TEACH FOR AMERICA under this Agreement for such period of time as DDOE, at its sole discretion, may prescribe by providing written notice to TEACH FOR AMERICA at least 30 working days prior to the date on which DDOE wishes to suspend. Upon such suspension, DDOE shall pay TEACH FOR AMERICA its compensation, based on the percentage of the project completed and earned until the effective date of suspension, less all previous payments. TEACH FOR AMERICA shall not perform further work under this Agreement after the effective date of suspension. TEACH FOR AMERICA shall not perform further work under this Agreement after the effective date of suspension until receipt of written notice from DDOE to resume performance.

12.2 In the event DDOE suspends performance by TEACH FOR AMERICA for any cause other than the error or omission of the TEACH FOR AMERICA, for an aggregate period in excess of 30 days, TEACH FOR AMERICA shall be entitled to an equitable adjustment of the compensation payable to TEACH FOR AMERICA under this Agreement to reimburse TEACH FOR AMERICA for additional costs occasioned as a result of such suspension of performance by DDOE based on appropriated funds and approval by DDOE.

13. Termination.

13.1 This Agreement may be terminated in whole or in part by either party in the event of substantial failure of the other party to fulfill its obligations under this Agreement through no fault of the terminating party; but only after the other party is given:

- a. Not less than 30 calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with the terminating party prior to termination.

13.2 This Agreement may be terminated in whole or in part by DDOE for its convenience, but only after TEACH FOR AMERICA is given:

- a. Not less than 30 calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with DDOE prior to termination.

13.3 If termination for default is effected by DDOE, DDOE will pay TEACH FOR AMERICA that portion of the compensation which has been earned as of the effective date of termination but:

- a. No amount shall be allowed for anticipated profit on performed or unperformed services or other work, and
- b. Any payment due to TEACH FOR AMERICA at the time of termination may be adjusted to the extent of any additional costs occasioned to DDOE by reason of TEACH FOR AMERICA's default.
- c. Upon termination for default, DDOE may take over the work and prosecute the same to completion by agreement with another party or otherwise. In the event TEACH FOR AMERICA shall cease conducting business, DDOE shall have the right to make an unsolicited offer of employment to any employees of TEACH FOR AMERICA assigned to the performance of the Agreement, notwithstanding the provisions of Section 10.2.

13.4 If after termination for failure of TEACH FOR AMERICA to fulfill contractual obligations it is determined that TEACH FOR AMERICA has not so failed, the termination shall be deemed to have been effected for the convenience of DDOE.

13.5 The rights and remedies of DDOE and TEACH FOR AMERICA provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.

13.6 Gratuities.

13.6.1 DDOE may, by written notice to TEACH FOR AMERICA, terminate this Agreement if it is found after notice and hearing by DDOE that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by TEACH FOR AMERICA or any agent or representative of TEACH FOR AMERICA to any officer or employee of DDOE with a view toward securing a contract or securing

favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this Agreement.

13.6.2 In the event this Agreement is terminated as provided in 13.6.1 hereof, DDOE shall be entitled to pursue the same remedies against TEACH FOR AMERICA it could pursue in the event of a breach of this Agreement by TEACH FOR AMERICA.

13.6.3 The rights and remedies of DDOE provided in Section 13.6 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

14. Severability.

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

15. Assignment; Subcontracts.

15.1 Any attempt by TEACH FOR AMERICA to assign or otherwise transfer any interest in this Agreement without the prior written consent of DDOE shall be void. Such consent shall not be unreasonably withheld.

15.2 Services specified by this Agreement shall not be subcontracted by TEACH FOR AMERICA, without prior written approval of DDOE.

15.3 Approval by DDOE of TEACH FOR AMERICA's request to subcontract or acceptance of or payment for subcontracted work by DDOE shall not in any way relieve TEACH FOR AMERICA of responsibility for the professional and technical accuracy and adequacy of the work. All subcontractors shall adhere to all applicable provisions of this Agreement.

15.4 TEACH FOR AMERICA shall be and remain liable for all damages to DDOE caused by negligent performance or non-performance of work under this Agreement by TEACH FOR AMERICA, its subcontractor or its sub-subcontractor.

15.5 The compensation due shall not be affected by DDOE's approval of the TEACH FOR AMERICA's request to subcontract.

16. Force Majeure.

Neither party shall be liable for any delays or failures in performance due to circumstances beyond its reasonable control.

17. Non-Appropriation of Funds.

17.1 Validity and enforcement of this Agreement is subject to appropriations by the General Assembly of the specific funds necessary for contract performance. Should such funds not be so appropriated DDOE may immediately terminate this Agreement, and absent such action this Agreement shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available, at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds.

17.2 Notwithstanding any other provisions of this Agreement, this Agreement shall terminate and DDOE's obligations under it shall be extinguished at the end of the fiscal year in which the State of Delaware fails to appropriate monies for the ensuing fiscal year sufficient for the payment of all amounts which will then become due.

18. State of Delaware Business License.

TEACH FOR AMERICA and all subcontractors represent that they are properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C.* § 2301.

19. Complete Agreement.

19.1 This agreement and its Appendices shall constitute the entire agreement between DDOE and TEACH FOR AMERICA with respect to the subject matter of this Agreement and shall not be modified or changed without the express written consent of the parties. The provisions of this agreement supersede all prior oral and written quotations, communications, agreements and understandings of the parties with respect to the subject matter of this Agreement.

19.2 If the scope of any provision of this Agreement is too broad in any respect

whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the Agreement shall not thereby fail, but the scope of such provision shall be curtailed only to the extent necessary to conform to the law.

19.3 TEACH FOR AMERICA may not order any product requiring a purchase order prior to DDOE's issuance of such order. Each Appendix, except as its terms otherwise expressly provide, shall be a complete statement of its subject matter and shall supplement and modify the terms and conditions of this Agreement for the purposes of that engagement only. No other agreements, representations, warranties or other matters, whether oral or written, shall be deemed to bind the parties hereto with respect to the subject matter hereof.

20. Miscellaneous Provisions.

20.1 In performance of this Agreement, TEACH FOR AMERICA shall comply with all applicable federal, state and local laws, ordinances, codes and regulations. TEACH FOR AMERICA shall solely bear the costs of permits and other relevant costs required in the performance of this Agreement.

20.2 Neither this Agreement nor any appendix may be modified or amended except by the mutual written agreement of the parties. No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the party against which it is sought to be enforced.

20.3 The delay or failure by either party to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

20.4 TEACH FOR AMERICA covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. TEACH FOR AMERICA further covenants, to its knowledge and ability, that in the performance of said services no person having any such interest shall be employed.

20.5 TEACH FOR AMERICA acknowledges that DDOE has an obligation to ensure that public funds are not used to subsidize private discrimination. TEACH FOR AMERICA recognizes that if they refuse to hire or do business with an

individual or company due to reasons of race, color, gender, ethnicity, disability, national origin, age, or any other protected status, DDOE may declare TEACH FOR AMERICA in breach of the Agreement, terminate the Agreement, and designate TEACH FOR AMERICA as non-responsible.

20.6 TEACH FOR AMERICA warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, DDOE shall have the right to annul this contract without liability or at its discretion deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

20.7 This Agreement was drafted with the joint participation of both parties and shall be construed neither against nor in favor of either, but rather in accordance with the fair meaning thereof.

20.8 TEACH FOR AMERICA shall maintain all public records, as defined by 29 Del. C. § 502(7), relating to this Agreement and its deliverables for the time and in the manner specified by the Delaware Division of Archives, pursuant to the Delaware Public Records Law, 29 Del. C. Ch. 5. During the term of this Agreement, authorized representatives of DDOE may inspect or audit TEACH FOR AMERICA's performance and records pertaining to this Agreement at the TEACH FOR AMERICA business office during normal business hours.

21. Insurance.

21.1 TEACH FOR AMERICA shall maintain the following insurance during the term of this Agreement:

- A. Worker's Compensation and Employer's Liability Insurance in accordance with applicable law, **and**
- B. Comprehensive General Liability and Excess Liability - \$1,000,000.00 per person/\$3,000,000 per occurrence, **and**
- C. Miscellaneous Errors and Omissions - \$1,000,000.00 per person/\$3,000,000 per occurrence, **or**
- D. Automotive Liability Insurance covering all automotive units used in the work with limits of not less than \$100,000 each person and \$300,000 each accident as to bodily injury and \$25,000 as to property damage to others.

21.2. TEACH FOR AMERICA shall provide forty-five (45) days written notice of cancellation or material change of any policies.

21.3. Before any work is done pursuant to this Agreement, the Certificate of Insurance and/or copies of the insurance policies, referencing the contract number stated herein, shall be filed with the State.

21.4. In no event shall the State of Delaware be named as an additional insured on any policy required under this agreement.

22. Assignment of Antitrust Claims.

As consideration for the award and execution of this contract by the State, TEACH FOR AMERICA hereby grants, conveys, sells, assigns, and transfers to DDOE all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State of Delaware, relating to the particular goods or services purchased or acquired by the State pursuant to this contract.

23. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, except where Federal Law has precedence. TEACH FOR AMERICA consents to jurisdiction venue in the State of Delaware.

Delaware Department of Education

Karen Field Rogers
Associate Secretary, Financial Reform &
Resource Management

8/5/11
Date


Initial Finance Director

Peter Shulman
Chief Officer, Teacher & Leader
Effectiveness Unit

7/25/11
Date

Initial Work Group
Director

The New Teacher Project Statement of Agreement

This Agreement ("Agreement") is entered into as of July 1, 2011 ("Effective Date") and will end on September 30, 2012, by and between the State of Delaware, Department of Education, hereafter referred to as DDOE, and **The New Teacher Project, Inc.**, hereafter referred to as TNTP.

WHEREAS, DDOE desires to obtain certain services with respect to the recruitment, selection and pre-service training of aspiring educators to teach in public schools and districts within the State of Delaware; and

WHEREAS, TNTP desires to provide such services to DDOE on the terms set forth below;

WHEREAS, DDOE and TNTP represent and warrant that each party has full right, power and authority to enter into and perform under this Agreement;

FOR AND IN CONSIDERATION OF the premises and mutual agreements herein, DDOE and TNTP agree as follows:

1. Services.

1.1 TNTP shall perform for DDOE the services specified in Appendix A to this Agreement (Statement of Work), attached hereto and made a part hereof.

1.2 Any conflict or inconsistency between the provisions of the following documents shall be resolved by giving precedence to such documents in the following order: (a) this Agreement (including Appendix A, and any amendments or modifications thereto); (b) DDOE's request for proposals, attached hereto as Appendix C; and (c) TNTP's response to the request for proposals, attached hereto as Appendix D. The aforementioned documents are specifically incorporated into this Agreement and made a part hereof.

1.3 The parties may, at any time, upon mutual written agreement, make changes in the scope of this Agreement and in the services or work to be performed. No services for which additional compensation may be charged by TNTP shall be furnished without the written authorization of DDOE. Should DDOE desire any addition or deletion to the deliverables or a change in the Services to be provided under this Agreement, TNTP shall then submit to DDOE a "Change Order" for approval authorizing said change. The Change Order shall state whether the change shall cause an alteration in the price or the time required by TNTP for any aspect of its performance under this Agreement. Pricing of changes shall be consistent with those established within this Agreement.

1.4 TNTP will not be required to make changes to its scope of work. Any claim of either party for an adjustment under Section 1 of this Agreement shall be asserted in the manner specified in the writing that authorizes the adjustment.

2. Payment for Services and Expenses.

2.1 The term of the initial contract shall be from July 1, 2011 through September 30, 2012.

2.2 DDOE will pay TNTP for the performance of services described in Appendix A, Statement of Work. The fee will be paid in accordance with the payment schedule attached hereto as part of Appendix B.

2.3 DDOE's obligation to pay TNTP for the performance of services described in Appendix A, Statement of Work will not exceed \$590,489. The terms expressed in Appendix B govern the minimum payment amount and payment schedule for the performance of services. It is expressly understood that the work defined in the appendices to this Agreement must be completed by TNTP, and it shall be TNTP's responsibility to ensure that hours and tasks are properly budgeted so that all services are completed for the agreed upon fixed fee. DDOE's total liability for all charges for services that may become due under this Agreement is limited to the total maximum expenditure(s) authorized in this Agreement.

2.4 TNTP shall submit invoices to DDOE in accordance with the deliverables required for payment in Appendix B., DDOE agrees to pay those invoices within thirty (30) days of receipt. In the event DDOE disputes a portion of an invoice, DDOE agrees to pay the undisputed portion of the invoice within thirty (30) days of receipt and to provide TNTP a detailed statement of DDOE's position on the disputed portion of the invoice within thirty (30) days of receipt. DDOE's failure to pay any amount of an invoice that is not the subject of a good-faith dispute within thirty (30) days of receipt shall entitle TNTP to charge interest on the overdue portion at the lower of 1.0% per month.

2.5 Unless provided otherwise in an Appendix, all expenses incurred in the performance of the services are to be paid by TNTP. If an Appendix specifically provides for expense reimbursement, TNTP shall be reimbursed only for reasonable expenses incurred by TNTP in the performance of the services, including, but not necessarily limited to, travel and lodging expenses, communications charges, and computer time and supplies.

2.6 DDOE is a sovereign entity, and shall not be liable for the payment of

federal, state and local sales, use and excise taxes, including any interest and penalties from any related deficiency, which may become due and payable as a consequence of this Agreement.

2.7 DDOE shall subtract from any payment made to TNTP all damages, costs and expenses caused by TNTP's negligence, resulting from or arising out of errors or omissions in TNTP's work products, which have not been previously paid to TNTP.

2.8 Invoices shall be submitted to:

Michelle L. Kriss
Race To The Top Project Management Office &
Professional Standards Board
Delaware Department of Education
401 Federal Street, Suite #2
Dover, DE 19901-3639

3. Responsibilities of TNTP.

3.1 TNTP shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by TNTP, its subcontractors and its and their principals, officers, employees and agents under this Agreement. In performing the specified services, TNTP shall follow practices consistent with generally accepted professional and technical standards. TNTP shall be responsible for ensuring that all services, products and deliverables furnished pursuant to this Agreement comply with the standards promulgated by the Department of Technology and Information ("DTI") published at <http://dti.delaware.gov/>, and as modified from time to time by DTI during the term of this Agreement. If any service, product or deliverable furnished pursuant to this Agreement does not conform with DTI standards, TNTP shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform with DTI standards. TNTP shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to DDOE caused by TNTP's failure to ensure compliance with DTI standards.

3.2 It shall be the duty of the TNTP to assure that all products of its effort are technically sound and in conformance with all pertinent Federal, State and Local statutes, codes, ordinances, resolutions and other regulations. TNTP will not produce a work product that violates or infringes on any copyright or patent rights. TNTP shall, without additional compensation, correct or revise any errors

or omissions in its work products.

3.3 Permitted or required approval by DDOE of any products or services furnished by TNTP shall not in any way relieve TNTP of responsibility for the professional and technical accuracy and adequacy of its work. DDOE's review, approval, acceptance, or payment for any of TNTP's services herein shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and TNTP shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to DDOE caused by TNTP's performance or failure to perform under this Agreement.

3.4 TNTP shall appoint a Project Manager who will manage the performance of services. All of the services specified by this Agreement shall be performed by the Project Manager, or by TNTP's associates and employees under the personal supervision of the Project Manager. The positions anticipated include:

Project	Team	Title	% of Project Involvement
Delaware Teaching Fellows		Site Manager	100%
Delaware Teaching Fellows		Recruitment & Operations Manager	100%
Delaware Teaching Fellows		Training & Resource Manager	100%

3.5 Should the staff need to be diverted off the project for what are now unforeseeable circumstances, TNTP will notify DDOE immediately and work out a transition plan that is acceptable to both parties, as well as agree to an acceptable replacement plan to fill or complete the work assigned to this project staff position. Upon receipt of written notice from DDOE that an employee of TNTP is unsuitable to DDOE for good cause, TNTP shall consider removing such employee from the performance of services and substituting in his/her place a suitable employee.

3.6 TNTP shall furnish to DDOE's designated representative copies of all correspondence to regulatory agencies.

3.7 TNTP agrees that its officers and employees assigned to this project will cooperate with DDOE in the performance of services under this Agreement and will be available for consultation with DDOE at such reasonable times with advance notice as to not conflict with their other responsibilities.

3.8 TNTP has or will retain such employees as it may need to perform the services required by this Agreement. Such employees shall not be employed by

the State of Delaware or any other political subdivision of the State.

3.9 TNTP will not use DDOE's name, either express or implied, in any of its advertising or sales materials without DDOE's express written consent.

3.10 The rights and remedies of DDOE provided for in this Agreement are in addition to any other rights and remedies provided by law.

4. Time Schedule.

4.1 A project schedule is included in Appendix A.

4.2 Any delay of services or change in sequence of tasks must be approved in writing by DDOE.

4.3 In the event that TNTP fails to complete the project or any phase thereof within the time specified in the Contract, or with such additional time as may be granted in writing by DDOE, or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this Agreement or any extensions thereof, DDOE shall suspend the payments scheduled as set forth in Appendix B.

5. State Responsibilities.

5.1 In connection with TNTP's provision of the Services, DDOE shall perform those tasks and fulfill those responsibilities specified in the appropriate Appendices.

5.2 DDOE agrees that its officers and employees will cooperate with TNTP in the performance of services under this Agreement and will be available for consultation with TNTP at such reasonable times with advance notice as to not conflict with their other responsibilities.

5.3 The services performed by TNTP under this Agreement shall be subject to review for compliance with the terms of this Agreement by DDOE's designated representatives.

5.4 The review comments of DDOE's designated representatives may be reported in writing as needed to TNTP. It is understood that DDOE's representatives' review comments do not relieve TNTP from the responsibility for the professional and technical accuracy of all work delivered under this Agreement.

5.5 DDOE shall, without charge, furnish to or make available for examination or use by TNTP as it may request, any data which DDOE has available, including as examples only and not as a limitation:

- a. Copies of reports, surveys, records, and other pertinent documents;
- b. Copies of previously prepared reports, job specifications, surveys, records, ordinances, codes, regulations, other document, and information related to the services specified by this Agreement.

TNTP shall return any original data provided by DDOE.

5.6 DDOE shall assist TNTP in obtaining data on documents from public officers or agencies and from private citizens and business firms whenever such material is necessary for the completion of the services specified by this Agreement.

5.7 TNTP will not be responsible for accuracy of information or data supplied by DDOE or other sources to the extent such information or data would be relied upon by a reasonably prudent contractor.

5.8 TNTP reserves the right to reuse the nonproprietary data and the analysis of industry-related information in its continuing analysis of the industries covered.

6. Work Product.

6.1 Title to and ownership of TeacherTrack® (the "System"), including all modifications, enhancements, upgrades, extensions, other changes to, and derivative works of the System, made by or on behalf of TNTP, as well as all work products and materials created by or on behalf of TNTP prior to this Agreement or for DDOE or partner LEAs, or otherwise arising out of the performance of the services hereunder, whether partial or complete (collectively referred to as the "Work"), shall be and remain solely in TNTP. DDOE agrees that the System and all Work created by TNTP will not be transferred, shared, licensed or sold by DDOE to any other school district or entity under any circumstances without the prior written consent of TNTP. TNTP shall be considered the author of the System and the Work for purposes of copyright and only TNTP shall have the right to copyright the same. Additionally, TNTP retains all rights, title and interest in and to all processes, methods, systems, layouts and information (collectively the "TNTP Tools") used in creating the System and the Work. Nothing in this Agreement shall be deemed to grant any ownership rights in the System or the TNTP Tools to DDOE, and except as expressly granted to DDOE

hereunder, DDOE shall have no right or license with respect thereto.

6.2 As between DDOE and TNTP, DDOE owns all participant data provided by DDOE and incorporated in the Work. DDOE agrees that TNTP may use such data to perform its obligations hereunder (including the incorporation thereof into the System and the Work) and may use such data on an anonymous, aggregated basis for its other legitimate business purposes, including, without limitation, for purposes of publication/presentation by TNTP. DDOE acknowledges that, for such purposes, TNTP may identify the program from which the data originated.

6.3 Nothing in this Agreement shall be deemed to prohibit TNTP from using, or to grant to DDOE any right, title or interest in, the accumulated knowledge, expertise, and general know-how of TNTP, whether developed before or after the commencement of this Agreement, including without limitation, any systems, layout, or processes to develop works for others that are similar to the services provided hereunder.

6.4 DDOE and TNTP agree that either party may use descriptions of the programs created pursuant to this Agreement in future promotional materials.

6.5 These intellectual property rights shall survive the termination of this Agreement.

7. Confidential Information.

To the extent permissible under 29 *Del. C.* § 10001, et seq., the parties to this Agreement shall preserve in strict confidence any information, reports or documents obtained, assembled or prepared in connection with the performance of this Agreement.

8. Warranty.

8.1 TNTP warrants that its services will be performed in a good and workmanlike manner. TNTP agrees to re-perform any work not in compliance with this warranty brought to its attention within a reasonable time after that work is performed.

8.2 Third-party products within the scope of this Agreement are warranted solely under the terms and conditions of the licenses or other agreements by which such products are governed. With respect to all third-party products and services purchased by TNTP for DDOE in connection with the provision of the Services, TNTP shall pass through or assign to DDOE the rights TNTP obtains from

the manufacturers and/or vendors of such products and services (including warranty and indemnification rights), all to the extent that such rights are assignable.

9. Indemnification; Limitation of Liability.

9.1 TNTP shall indemnify and hold harmless the state, its agents and employees, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) directly arising out of (A) the negligence or other wrongful conduct of the TNTP, its agents or employees, or (B) TNTP's breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided as to (A) or (B) that (i) TNTP shall have been notified promptly in writing by DDOE of any notice of such claim; and (ii) TNTP shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise.

9.2 If DDOE promptly notifies TNTP in writing of a third party claim against DDOE that any Deliverable infringes a copyright or a trade secret of any third party, TNTP will defend such claim at its expense and will pay any costs or damages that may be finally awarded against DDOE. TNTP will not indemnify DDOE, however, if the claim of infringement is caused by (1) DDOE's misuse or modification of the Deliverable; (2) DDOE's failure to use corrections or enhancements made available by TNTP; (3) DDOE's use of the Deliverable in combination with any product or information not owned or developed by TNTP; (4) DDOE's distribution, marketing or use for the benefit of third parties of the Deliverable or (5) information, direction, specification or materials provided by Client or any third party. If any Deliverable is, or in TNTP's opinion is likely to be, held to be infringing, TNTP shall at its expense and option either (a) procure the right for DDOE to continue using it, (b) replace it with a noninfringing equivalent, (c) modify it to make it noninfringing. The foregoing remedies constitute DDOE's sole and exclusive remedies and TNTP's entire liability with respect to infringement.

9.3 DDOE agrees that TNTP's total liability to DDOE for any and all damages whatsoever arising out of or in any way related to this Agreement from any cause, including but not limited to contract liability or TNTP's negligence, errors, omissions, strict liability, breach of contract or breach of warranty shall not, in the aggregate, exceed fees paid to TNTP.

In no event shall TNTP be liable for special, indirect, incidental, economic, consequential or punitive damages, including but not limited to lost revenue,

lost profits, replacement goods, loss of technology rights or services, loss of data, or interruption or loss of use of software or any portion thereof regardless of the legal theory under which such damages are sought, and even if TNTP has been advised of the likelihood of such damages.

10. Employees.

10.1 TNTP has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by TNTP in the performance of the services hereunder; provided, however, that it will, subject to scheduling and staffing considerations, attempt to honor DDOE's request for specific individuals.

10.2 Except as the other party expressly authorizes in writing in advance, neither party shall directly solicit any of the other party's Personnel during their participation in the services or during the twelve (12) months thereafter. For purposes of this Section 10.2, "Personnel" includes any individual or company a party employs as a partner, employee or independent contractor and with which a party comes into direct contact in the course of the services.

10.3 Possession of a Security Clearance, as issued by the Delaware Department of Safety and Homeland Security, may be required of any employee of TNTP who will be assigned to this project.

11. Independent Contractor.

11.1 It is understood that in the performance of the services herein provided for, TNTP shall be, and is, an independent contractor, and is not an agent or employee of DDOE and shall furnish such services in its own manner and method except as required by this Agreement. TNTP shall be solely responsible for, and shall indemnify, defend and save DDOE harmless from all matters relating to the payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever.

11.2 TNTP acknowledges that TNTP and any subcontractors, agents or employees employed by TNTP shall not, under any circumstances, be considered employees of DDOE, and that they shall not be entitled to any of the benefits or rights afforded employees of DDOE, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits. DDOE will not provide or pay for any liability or medical insurance,

retirement contributions or any other benefits for or on behalf of DDOE or any of its officers, employees or other agents.

11.3 TNTP shall be responsible for providing liability insurance for its personnel.

11.4 As an independent contractor, TNTP has no authority to bind or commit DDOE. Nothing herein shall be deemed or construed to create a joint venture, partnership, fiduciary or agency relationship between the parties for any purpose.

11.5 The parties acknowledge that the individuals recruited and trained pursuant to this Agreement will not be employed by TNTP. The parties agree that the Local Education Agencies (LEAs) receiving TNTP services, and not TNTP, are responsible for the final hiring and termination decisions for all applicants for the program(s) described in this Agreement and for all candidates for teaching positions, and the LEAs will be the employer of all individuals selected for teaching positions. The LEAs are responsible for managing the appeals process, if any, and making decisions for candidates who appeal the selection decision. TNTP is not liable for any actions brought by third parties as a result of the selection decisions.

12. Suspension.

12.1 DDOE may suspend performance by TNTP under this Agreement for such period of time as DDOE, at its sole discretion, may prescribe by providing written notice to TNTP at least 60 working days prior to the date on which DDOE wishes to suspend. Upon such suspension, DDOE shall pay TNTP its compensation, based on the percentage of the project completed and earned until the effective date of suspension, less all previous payments. TNTP shall not perform further work under this Agreement after the effective date of suspension. TNTP shall not perform further work under this Agreement after the effective date of suspension until receipt of written notice from DDOE to resume performance.

12.2 In the event DDOE suspends performance by TNTP for any cause other than the error or omission of the TNTP, for an aggregate period in excess of 30 days, TNTP shall be entitled to an equitable adjustment of the compensation payable to TNTP under this Agreement to reimburse TNTP for additional costs occasioned as a result of such suspension of performance by DDOE based on appropriated funds and approval by DDOE

IN WITNESS THEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date and year first above written.

The New Teacher Project, Inc.

Delaware Department of Education

Ariela Rozman
Chief Executive Officer

Karen Field Rogers
Associate Secretary, Financial Reform &
Resource Management

7/21/11
Date

7/13/11 ak
Date Initial Finance Director

Peter Shulman
Chief Officer, Teacher and Leader
Effectiveness Unit

7/5/11 C.F.
Date Initial Work Group
Director